

COPY

1 WILLIAM VERICK, SBN 140972  
2 FREDRIC EVENSON, SBN 198059  
3 KLAMATH ENVIRONMENTAL LAW CENTER  
4 424 First Street  
5 Eureka, CA 95501  
6 Telephone: (707) 268-8900  
7 Facsimile: (707) 268-8901  
8 E-mail: wverick@igc.org

9 DAVID WILLIAMS, SBN 144479  
10 BRIAN ACREE, SBN 202505  
11 PUBLIC INTEREST LAWYERS GROUP  
12 370 Grand Avenue  
13 Suite 5  
14 Oakland, CA 94610  
15 Telephone: (510) 271-0826  
16 Facsimile: (510) 271-0829  
17 E-mail: dhwill7@gmail.com

18 Attorneys for Plaintiff  
19 MATEEL ENVIRONMENTAL JUSTICE  
20 FOUNDATION

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **FOR THE COUNTY OF SAN FRANCISCO**

23 MATEEL ENVIRONMENTAL  
24 JUSTICE FOUNDATION,,

25 Plaintiff,

26 v.

27 THE FAUCET-QUEENS, INC; ACE  
28 HARDWARE CORPORATION; 99  
CENTS ONLY STORES; TARGET  
CORPORATION; TRG  
ACCESSORIES, LLC; TRUE VALUE  
COMPANY; AMERCO, INC.; U-  
HAUL CO. OF CALIFORNIA;  
WALGREEN CO.; WINNER  
INTERNATIONAL LLC,

Defendants.

**ENDORSED  
FILED**  
San Francisco County Superior Court

AUG 14 2008

**GORDON PARK-LI, Clerk**  
BY: JHULIE ROQUE  
Deputy Clerk

Case No. CGC 08-471406

**CONSENT JUDGMENT AS TO  
DEFENDANT U-HAUL**

1           **1.     INTRODUCTION**

2           **1.1**     On January 25, 2008, the MATEEL ENVIRONMENTAL JUSTICE  
3 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a  
4 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County  
5 Superior Court, Case No.CGC-08-471406, against U-Haul Co. of California (“U-Haul” or  
6 “Defendant”). The Complaint alleges, among other things, that Defendant violated  
7 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and  
8 Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges  
9 that Defendant has knowingly and intentionally exposed persons to padlocks made of  
10 brass containing lead and/or lead compounds (hereinafter “leaded brass”), which are  
11 chemicals known to the State of California to cause cancer and birth defects or other  
12 reproductive harm, without first providing a clear and reasonable warning to such  
13 individuals.

14           **1.2**     On July 24, 2007, a 60-Day Notice letter (“Notice Letter”) was sent by  
15 Mateel to U-Haul, the California Attorney General, all California District Attorneys, and  
16 all City Attorneys of each California city with a population exceeding 750,000.

17           **1.3**     U-Haul is a business that employ ten or more persons and which markets  
18 locks, including padlocks, within the State of California. Some of those products are  
19 alleged to contain lead and/or lead compounds. Lead and lead compounds are chemicals  
20 known to the State of California to cause cancer, and lead is a chemical known to the State  
21 of California to cause reproductive toxicity pursuant to Health and Safety Code Section  
22 25249.9. Under specified circumstances, products containing lead and/or lead compounds  
23 that are sold or distributed in the State of California are subject to the Proposition 65  
24 warning requirement set forth in Health and Safety Code Section 25249.6. Plaintiff  
25 Mateel alleges that leaded brass padlocks that Defendants marketed for use in California  
26 require a warning under Proposition 65.

27           **1.4**     For purposes of this Consent Judgment, the term “Covered Products” shall  
28 be defined as locks containing lead and/or lead compounds, such as leaded brass padlocks

1 to the extent such products are distributed and sold within the state of California, that are  
2 marketed and/or sold by U-Haul.

3 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court  
4 has jurisdiction over the allegations of violations contained in the Complaint and personal  
5 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in  
6 the County of San Francisco and that this Court has jurisdiction to enter this Consent  
7 Judgment as a full settlement and resolution of the allegations contained in the Complaint  
8 and of all claims that were or could have been raised by any person or entity based in  
9 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or  
10 related thereto.

11 1.6 This Consent Judgment resolves claims that are denied and disputed. The  
12 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
13 all claims between the parties for the purpose of avoiding prolonged litigation. This  
14 Consent Judgment shall not constitute an admission with respect to any material allegation  
15 of the Complaint, each and every allegation of which Defendant denies, nor may this  
16 Consent Judgment or compliance with it be used as evidence of any wrongdoing,  
17 misconduct, culpability or liability on the part of U-Haul.

18 2. SETTLEMENT PAYMENT

19 2.1 In settlement of all of the claims referred to in this Consent Judgment  
20 against the Defendants, within thirty (30) business days of notice entry of this Consent  
21 Judgment, U-Haul shall pay \$15,000 to the Klamath Environmental Law Center  
22 ("KELC") to cover Mateel's attorneys' fees and costs.

23 2.2 Within thirty (30) business days of notice of entry of this Consent Judgment,  
24 U-Haul shall pay \$10,000 to the Ecological Rights Foundation and \$10,000 to  
25 Californians for Alternatives to Toxics. Both are California non-profit environmental  
26 organizations that advocate for workers' and consumers' safety, and for awareness and  
27 reduction of toxic exposures.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**3. ENTRY OF CONSENT JUDGMENT**

**3.1** The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of the Consent Judgment, Defendant and Mateel waive their respective rights to a hearing or trial on the allegations of the Complaint.

**4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

**4.1** As to the Covered Products, this Consent Judgment is a final and binding resolution between Mateel, acting on behalf of itself and, as to those matters raised in the Notice Letter, the general public, and Defendant, of: (i) any violation of Proposition 65 with respect to the Covered Products, and (ii) any other statutory or common law claim, to the fullest extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any person or entity against Defendant based upon, arising out of or relating to Defendant's compliance with Proposition 65, or regulations promulgated thereunder, and any other claim based in whole or part on the facts alleged in the Complaint, whether based on actions committed by Defendant or by any entity within its chain of distribution, including, but not limited to, manufacturers, wholesale or retail sellers or distributors and any other person in the course of doing business. As to alleged exposures to Covered Products raised in the Notice Letter, compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by Defendant and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its manufacturers, customers, distributors, wholesalers, retailers or any other person in the course of doing business, and the successors and assigns of any of these who may manufacture, use, maintain, distribute, market or sell Covered Products, with the requirements of Proposition 65.

**4.2** As to alleged exposures to Covered Products raised in the Notice Letters, Mateel, on behalf of itself it's agents, successors and assigns, and the general public waives all rights to institute any form of legal action, and releases all claims against U-Haul and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their customers, manufacturers, distributors, wholesalers, retailers or any other

1 person in the course of doing business, and the successors and assigns of any of them,  
2 who may manufacture, use, maintain, distribute or sell the Covered Products, whether  
3 under Proposition 65 or otherwise, arising out of or resulting from, or related directly or  
4 indirectly to, in whole or in part, the claims identified in Mateel's Notice Letter. In  
5 furtherance of the foregoing, Mateel, acting on behalf of itself and, as to matters raised in  
6 the Notice Letter, on behalf of the general public, hereby waives any and all rights and  
7 benefits which it now has, or in the future may have, conferred upon it with respect to the  
8 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,  
9 which provides as follows:

10 "A GENERAL RELEASE DOES NOT EXTEND TO  
11 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR  
12 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
13 EXECUTING THE RELEASE, WHICH IF KNOWN BY  
14 HIM MUST HAVE MATERIALLY AFFECTED HIS  
15 SETTLEMENT WITH THE DEBTOR."

16 Mateel understands and acknowledges that the significance and consequence of this  
17 waiver of California Civil Code Section 1542 is that even if Mateel or, as to matters raised  
18 in the Notice Letter, if any member of the general public suffers future damages arising  
19 out of or resulting from, or related directly or indirectly to, in whole or in part, the  
20 Covered Products, it will not be able to make any claim for those damages against  
21 Defendant, its parents, subsidiaries or affiliates, predecessors, officers, directors,  
22 employees, and all of their customers, manufacturers, distributors, wholesalers, retailers or  
23 any other person in the course of doing business, and the successors and assigns of any of  
24 them, who may manufacture, use, maintain, distribute or sell the Covered Products.  
25 Furthermore, Mateel acknowledges that it intends these consequences for any such claims  
26 which may exist as of the date of this release but which Mateel does not know exist, and  
27 which, if known, would materially affect its decision to enter into this Consent Judgment,  
28 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,

1 negligence, or any other cause.

2 **5. ENFORCEMENT OF JUDGMENT**

3 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the  
4 parties hereto. The parties may, by noticed motion or order to show cause before the  
5 Superior Court of San Francisco County, giving the notice required by law, enforce the  
6 terms and conditions contained herein.

7 **6. MODIFICATION OF JUDGMENT**

8 Except as provided for in Paragraph 7.2(c), this Consent Judgment may be  
9 modified only upon written agreement of the parties and upon entry of a modified Consent  
10 Judgment by the Court thereon, or upon motion of any party as provided by law and upon  
11 entry of a modified Consent Judgment by the Court.

12 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

13 **7.1** As to any Covered Products for which the normally intended function and  
14 manner of use of the product involves the gripping or holding of the product by gripping  
15 or holding a component made from leaded brass, or such brass comes into contact with the  
16 user, a warning as described in paragraph 7.2 below shall be provided. The warning  
17 requirements set forth in paragraph 7.2 shall apply only to: Covered Products that  
18 Defendant ships for distribution after 270 days after entry of this Consent Judgment ("the  
19 Effective Date).

20 **7.2** Defendants shall provide Proposition 65 warnings as follows:

21 (a) Defendants shall provide either of the following warning statements:

22 **WARNING:** This product contains lead, a chemical known to the State of  
23 California to cause cancer and birth defects or other reproductive harm.

24 *Wash hands after handling.*

25 or

26 **WARNING:** This product contains one or more chemicals known to the  
27 State of California to cause cancer and birth defects or other reproductive  
28 harm. *Wash hands after handling.*

1                   The word "WARNING" shall be in bold. The words "Wash hands  
2 after handling" shall be in bold and italicized.

3                   Defendant shall provide such warning with the unit package of the  
4 Covered Products. Such warning shall be prominently affixed to or printed  
5 on each Covered Product's label or package.

6                   (b) The requirements for product labeling, set forth in subparagraph  
7 (a) above are imposed pursuant to the terms of this Consent Judgment. The  
8 parties recognize that product labeling is not the exclusive method of  
9 providing a warning under Proposition 65 and its implementing regulations.

10                   (c) If Proposition 65 warnings for lead or lead compounds should  
11 no longer be required, Defendants shall have no further warning obligations  
12 pursuant to this Consent Judgment. In the event that Defendant ceases to  
13 implement or if Defendant modifies the warnings required under this  
14 Consent Judgment (because of a change on the law or otherwise),  
15 Defendants shall provide written notice to Mateel (through KELC) of its  
16 intent to do so, and of the basis for its intent, no less than thirty (30) days in  
17 advance. Mateel shall notify Defendant in writing of any objection within  
18 thirty (30) days of its receipt of such notice, or such objection by Mateel  
19 shall be waived.

20                   **8. AUTHORITY TO STIPULATE**

21                   Each signatory to this Consent Judgment certifies that he or she is fully  
22 authorized by the party he or she represents to enter into this Consent Judgment and to  
23 execute it on behalf of the party represented and legally to bind that party.

24                   **9. RETENTION OF JURISDICTION**

25                   This Court shall retain jurisdiction of this matter to implement the Consent  
26 Judgment.

27                   **10. ENTIRE AGREEMENT**

28                   This Consent Judgment contains the sole and entire agreement and

1 understanding of the parties with respect to the entire subject matter hereof, and any and  
2 all prior discussions, negotiations, commitments and understandings related hereto. No  
3 representations, oral or otherwise, express or implied, other than those contained herein  
4 have been made by any party hereto. No other agreements not specifically referred to  
5 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

6 **11. GOVERNING LAW**

7 The validity, construction and performance of this Consent Judgment shall  
8 be governed by the laws of the State of California, without reference to any conflicts of  
9 law provisions of California law.

10 /////  
11 /////  
12 /////  
13 /////  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

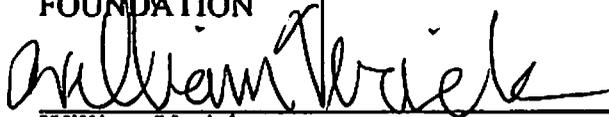
**12. COURT APPROVAL**

If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

DATED:

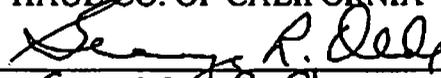
MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



William Verick  
CEO Mateel Environmental Justice  
Foundation,  
Klamath Environmental Law Center

DATED:

U-HAUL CO. OF CALIFORNIA



By: GEORGE R. OLDS  
Its: ~~ASS:~~ SECRETARY

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

DATED:

AUG 14 2008

**PATRICK J. MAHONEY**

**JUDGE OF THE SUPERIOR COURT**